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Attorney for Securities Department

BEFORE THE STATE AUDITOR, EX-OFFICIO COMMISSIONER OF SECURITIES  
FOR MONTANA

IN THE MATTER OF:	)	
	)	
MID-AMERICA ENERGY, INC.,	)	CASE NO.: C-04-03-07-30
a Nevada corporation	)	
103 Bluegrass Commons Blvd.	)	
Hendersonville, TN 37077-0738	)	
	)	
GARY MILBY., individually, and in his	)	
capacity as President of Mid-America	)	
Energy	)	NOTICE OF PROPOSED AGENCY
	)	DISCIPLINARY ACTION AND
CLINTON GOFF, individually, and in his	)	OPPORTUNITY FOR HEARING
capacity as Operations Manager for Mid-	)	
America Energy	)	
	)	
SY SCHAIKEN, individually, and in his	)	
capacity as a salesperson for Mid-America	)	
Energy	)	
	)	
	)	
Respondents.	)	

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Staff of the Securities Department of the office of the State Auditor as Commissioner of Securities of the State of Montana (Department), pursuant to the authority of the Securities Act of Montana, § 30-10-101, et seq., Montana Code Annotated (2005), proposes to the Commissioner that he take specific action against MID AMERICA ENERGY, INC. (Mid-America Energy), GARY MILBY (Milby), CLINTON GOFF (Goff) and SY SCHAIKEN

(Schaiken) for violations of the Montana Securities Act. The Commissioner has authority to take such action under the provisions of §§ 30-10-102, 30-10-107, 30-10-201, and 30-10-301, MCA.

In particular, the Department's staff is recommending specific action against Respondents including denial of registration as securities salespersons, imposition of appropriate restitution amounts, imposition of appropriate fines pursuant to the provisions of the Montana Securities Act, an immediate cease and desist order, as well as any equitable relief deemed appropriate.

Service of process is made pursuant to Sections 30-10-107 (8), MCA.

### **REASONS FOR ACTION**

There is reason to believe that the following facts, if true, justify and support specific disciplinary action.

### **ALLEGATIONS**

1. Mid-America Energy is a Nevada Corporation, incorporated on June 25, 2004. The Nevada Secretary of State's Office lists Mid-America Energy's address as 103 Bluegrass Commons Blvd., Hendersonville, TN 37077-0738. Mid-America Energy is not now nor has it ever been registered with the Department in any capacity.

2. Gary Milby is the President, Treasurer, Secretary and Director for Mid-America Energy. Milby's last known address is 321 Victor Reiter Parkway, Portland, TN 37148. Milby is not now nor has he ever been registered as a securities salesperson as defined at §30-10-103 (20), MCA.

3. Clinton Goff is the Operations Manager for Mid-America Energy. Goffs's last known address is 103 Bluegrass Commons Blvd., Hendersonville, TN 37077-0738. Goff is not

now nor has he ever been registered as a securities salesperson as defined at §30-10-103 (20), MCA.

4. Sy Schaiken is a salesperson for Mid-America Energy. Schaiken's last known address is 105 Mallard Drive, Hendersonville, TN, 37075. Schaiken is not now nor has he ever been registered as a securities salesperson as defined at §30-10-103 (20), MCA.

5. On or about late February 2007 a Missoula, Montana resident identified herein as "Complainant" contacted the Department. At that time Complainant made an oral complaint against Respondents. Complainant delivered copies of documentation supporting the complaint in early March 2007.

6. In or about February 2006 Schaiken, acting as a salesperson for Mid-America Energy contacted Complainant about an investment opportunity in oil. Mid-America Energy was offering 25 units<sup>1</sup> of Black Gold Oil #9, LLP, to fund the drilling and completion of three oil wells in Adair County, Kentucky. Schaiken represented to Complainant that each unit of the offering would cost \$24,000 and represented a 2.5% working interest with a 2% net revenue interest in the three oil wells.

7. In or about March 2006, Schaiken mailed Complainant a private placement memorandum and other marketing materials for Black Gold Oil #9, LLP. The marketing materials state that investors will receive:

- 3 guaranteed producing oil wells<sup>2</sup>
- Monthly income checks for as much as \$3,600 + per unit for as long as 30-50 years

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<sup>1</sup> These units represent interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease and are described in certificates of ownership. These units fall within the definition of a security found at §30-10-103 (22), MCA.

<sup>2</sup> The marketing materials state that if any of the wells drilled comes up dry, the company (Mid-America Energy) will drill a new well at the company's expense. This is also stated as an assurance for the Black Gold Oil #9 Auxiliary wells and the Black Gold Oil #10 wells.

- Approximately \$2,100 in monthly income comes to over \$1 million in income over 40 years.
- Earn 100% return on investment in approximately 12 months

8. The marketing materials state that “Mid-America will guarantee that your program will produce 50 barrels of oil a day, or the company will drill you a fourth well at the company’s expense.”

9. In or about March 2006 Complainant was informed that the 25 units for Black Gold Oil #9 LLP were no longer available, but that an offering for Black Gold Oil #9 Auxiliary, LLP was available. The private placement for Black Gold Oil #9 Auxiliary, LLP offered 4 units, at a cost of \$24,000 each. These units also represented a 2.5% working interest with a 2% net revenue interest in the three oil wells.

10. On or about March 30, 2006, Complainant wired \$48,000 from Complainant’s personal bank account to an account at SunTrust Bank located in Hendersonville, Tennessee, owned by Black Gold Oil #9 or Black Gold Oil #9 Auxiliary. Further, on or about April 1, 2006 Complainant and Complainant’s spouse completed a subscription agreement to purchase two units of Black Oil Gold #9 Auxiliary, LLP.

11. On or about April 10, 2006, Complainant received a “Certificate of Ownership” indicating that Complainant and Complainant’s spouse had a 4% net revenue interest in Black Gold Oil #9 Auxiliary, LLP.

12. In or about April 2006 Complainant and Complainant’s spouse visited Mid America Energy’s headquarters in Hendersonville, Tennessee, as well as the company’s oil fields in Adair County, Kentucky. Complainant met with both Milby and Goff. Milby and Goff told Complainant about a second invest opportunity, Black Gold Oil #10, LLP. The offering of Black

Gold Oil #10, LLP, was almost identical to Black Gold Oil #9, LLP, with 25 units being offered at a cost of \$24,000 per unit. Each unit represented a 2.5% working interest with a 2% net revenue interest in three oil wells.

13. On or about April 20, 2006, Complainant and Complainant's spouse completed the subscription agreement to purchase three units of Black Gold Oil #10, LLP. On or about April 26, 2006, \$72,000 was wired from Complainant's personal bank account to an account owned by Black Gold Oil #10, LLP at SunTrust Bank located in Hendersonville, Tennessee.

14. On or about May 22, 2006, Complainant received a "Certificate of Ownership" indicating that Complainant and Complainant's spouse had a 6% net revenue interest in Black Gold Oil #10, LLP.

15. In or about the fall of 2006, Schaiken called Complainant numerous times, encouraging Complainant to invest in an Eagle Oil unit offered by Mid-America Energy. The Eagle Oil unit was similar to the Black Oil Gold units, offering a fractional working interest in three oil wells. Complainant did not invest in this offering.

16. In or about January 2007, Schaiken called Complainant informing him that Mid-America Energy would be sending out K-1 tax forms to investors. Complainant never received a K-1. Complainant never received any monthly dividends, as promised, nor did they receive any other remuneration from Mid-America Energy. January 2007 was the last contact Complainant has had with Mid-America Energy or any of its representatives.

17. On or about December 6, 2005, the Pennsylvania Securities Commission issued a Summary Order to Cease and Desist against Mid-America Energy, Milby, and other individuals. This Order alleged the offering and/or sale of unregistered securities in the State of Pennsylvania.

18. On or about May 5, 2006, the California Department of Corporations issued a Desist and Refrain Order against Mid-America Energy, Milby, and other individuals. This Order alleged the offering and/or selling of unregistered securities and misrepresentation and omission of material fact in the offering and/or selling of those securities in the State of California.

19. On or about February 28, 2006, the Arizona Corporation Commission issued a Temporary Cease and Desist Order and Notice of Proposed Agency Action against Mid-America Energy, Milby, and other individuals. This Order alleged the offering and/or selling of unregistered securities and misrepresentation and omission of material fact in the offering and/or selling of those securities in the State of Arizona.

20. On or about September 8, 2006, the Arizona Corporation Commission issued a First Amended Temporary Cease and Desist Order and Notice of Proposed Agency Action against Mid-America Energy, Milby and other individuals. This amended action added Goff as a Respondent.

21. On or about September 29, 2006, Milby and Mid-America Energy were ordered by the Superior Court of Arizona to pay the state of Arizona \$1,000,000 for violations of the Security Act and violations of the Temporary Cease and Desist Order

22. On or about January 16, 2007, the Arizona Corporation Commission issued a permanent Cease and Desist Order against Mid-America Energy and Milby

23. On or about December 28, 2006, the Alabama Securities Commission issued a Cease and Desist Order against Mid-America Energy and Milby. This Order alleged the offering and/or sale of unregistered securities in the State of Alabama.

24. On or about February 13, 2007, Milby and his daughter, Ariel, were featured on MTV's "My Super Sweet 16" television show. The show depicts the planning and birthday

celebration of teenagers. Ariel's party took place on or about October 14, 2006, in Greensburg, Kentucky. The party was extravagant, and according to media reports costs in excess of \$100,000. In addition Milby purchased a BMW for Ariel. The Department believes that monies from investors in Mid-America Energy may have been used to fund the party and BMW.

25. The Department has attempted to contact Milby and Mid-America Energy via mail, however this mail has been returned.

Based on the foregoing allegations, the Department submits the following:

### **CONCLUSIONS OF LAW**

1. The State Auditor is the Commissioner of Securities (Commissioner) pursuant to MCA § 30-10-107

2. The Commissioner has jurisdiction over this matter pursuant to §§ 30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-10-304, 30-10-305, 30-10-307, MCA.

3. Mid-America Energy, Milby, Goff, and Schaiken may be collectively known as "Respondents".

4. Respondents violated §30-10-201(1), MCA, when they offered and sold units in Black Gold Oil #9, LLP, Black Gold Oil #9 Auxiliary, LLP and Black Gold Oil #10, LLP, when not registered to do so in the State of Montana.

5. Respondents violated §30-10-202, MCA, when they offered and sold units in Black Gold Oil #9, LLP, Black Gold Oil #9 Auxiliary, LLP, and Black Gold Oil #10, LLP, because the units are unregistered securities in the State of Montana.

6. Respondents violated §30-10-301(1)(b), MCA, when they misrepresented the expected rate of return on investments they offered and sold by guaranteeing and promising unrealistic investment returns.

7. Respondents violated §30-10-301(1)(c), MCA, when they engaged in an act, practice and course of business that acted as a fraud when on three occasions they misrepresented the expected rate of return on investments they offered and sold by guaranteeing and promising unrealistic investment returns.

8. Respondents violated § 30-10-201 (13) (g), MCA, and ARM § 6.10.126 (1) (q), when they used sales materials that guaranteed and promised unreasonable investment returns on securities they offer and sold to a Montana resident.

9. Respondents violated § 30-10-201 (13) (g), MCA, and ARM § 6.10.126 (1) (o), when they used sales materials that guaranteed and promised unreasonable investment returns on securities they offered and sold to a Montana resident.

### **RELIEF SOUGHT**

1. Order Respondents to pay restitution to Complainant in this case, pursuant to § 30-10-309, MCA;

2. Order Respondents to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-301, MCA, pursuant to § 30-10-305(3), MCA;

3. Order Respondents to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-201, MCA, pursuant to § 30-10-305(3), MCA;

4. Order Respondents to pay a fine not to exceed \$5,000 for violating § 30-10-201, MCA, pursuant to § 30-10-201 (18), MCA;

5. Order Respondents to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-202, MCA, pursuant to § 30-10-305(3), MCA;

6. Any other such relief allowed by law or required by justice.

### **PUBLIC INTEREST**



For any and all of the reasons set forth above, it is in the public interest and will protect Montana investors to:

1. Issue a cease and desist order barring Respondents from further violations of the Act;
2. Order Respondents to pay administrative fines in an amount and upon such terms and conditions as supported by the evidence and determined at hearing of this matter;
3. Order Respondents to pay restitution to Complainant in an amount and upon such terms and conditions as supported by the evidence and determined at hearing of this matter; and
4. Take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana investors.

### **STATEMENT OF RIGHTS**

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, sections 2-4-601, MCA, and following, including Section 2-4-631, MCA. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within fifteen (15) days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, Special Assistant Attorney General, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you

prefer for disposition of this case. Pursuant to Section 2-4-603(2), MCA, you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, (1973), 164 Mont. 139, 520 P.2d 103.

#### **CONTACT WITH SECURITIES COMMISSIONER'S OFFICE**

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the State Auditor, at 840 Helena Avenue, Helena, MT, 59601, (406)-444-2040 or, within Montana, (800)-332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

#### **POSSIBILITY OF DEFAULT**

Failure by Respondent to give notice or to advise of Respondent's demand for a hearing or informal procedure within fifteen (15) days, will result in the entry of a default order imposing the disciplinary sanctions against Respondent, without further notice to Respondent, pursuant to 6.2.101, Administrative Rules of Montana and the Attorney General's Model Rule 10, 1.3.214.

DATED this \_\_\_\_\_ day of May 2007.

JOHN MORRISON  
State Auditor and ex-officio  
Commissioner of Securities

By: \_\_\_\_\_  
Roberta Cross Guns  
Special Assistant Attorney General

### **CERTIFICATE OF SERVICE**

This is to certify that on this \_\_\_\_ day of May, 2007, a copy of the foregoing was served upon the following persons by depositing a copy of the action in the U.S. Mail, certified, return receipt requested, postage prepaid, addressed to:

Mid-America Energy, Inc.  
103 Bluegrass Commons Blvd.  
Hendersonville, TN 37077-0738

Gary Milby  
321 Victor Reiter Parkway  
Portland, TN 37148

Clinton Goff  
103 Bluegrass Commons Blvd.  
Hendersonville, TN 37077-0738

Sy Schaiken  
105 Mallard Drive  
Hendersonville, TN, 37075

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State Auditor's Office

disposition of this case. Pursuant to § 2-4-603(2), MCA, you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, (1973), 164 Mont. 139, 520 P.2d 103.

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#### **POSSIBILITY OF DEFAULT**

Failure by Respondent to give notice or to advise of Respondent's demand for a hearing or informal procedure within fifteen days, will result in the entry of a default order imposing the disciplinary sanctions against Respondent, without further notice to Respondent, pursuant to 6.2.101, A.R.M. and the Attorney General's Model Rule 10, 1.3.214.

DATED this 8th day of May, 2007.

JOHN MORRISON  
State Auditor and ex-officio Commissioner of  
Securities

By: Roberta Cross Guns  
Roberta Cross Guns  
Special Assistant Attorney General

CERTIFICATE OF SERVICE

This is to certify that on this 8<sup>th</sup> day of May, 2007, a copy of the foregoing was served upon the following persons by depositing a copy of the action in the U.S. Mail, certified, return receipt requested, postage prepaid, addressed to:

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State Auditor's Office